



STATE OF WYOMING

COLLECTION AGENCY BOARD

(307) 777-3497 Fax (307) 777-3555 Email:

March 17, 2020

TO: All Wyoming Collection Agency Licensees
FM: Wyoming Collection Agency Board, Bradley Chapman, Chairman
RE: Telework Guidelines

The Wyoming Collection Agency Board has received requests for guidance regarding remotely. In response to these inquiries, the Board offers the following:

Neither the Wyoming Collection Agency Act nor the Board's Rules prohibit remote work of licensees, with appropriate arrangements to ensure data security and compliance laws and regulations.

All employees working remotely and/or teleworking must be associated with a license. Teleworking or remote working employees must still comply with all applicable laws



New Mexico Regulation and Licensing Department

Financial Institutions Division

Toney Anaya Building ▪ 2550 Cerrillos Road ▪ Santa Fe, New Mexico 87505
Direct (505) 476-4885 ▪ Fax (505) 476-4670

Michelle Lujan Grisham
GOVERNOR

Marguerite Salazar
SUPERINTENDENT

Claudia Armijo
DEPUTY
SUPERINTENDENT

Christopher Moya
DIRECTOR

MEMORANDUM

TO: All New Mexico Licensed Collection Agency Companies and Managers

FROM: Christopher Moya, Director

DATE: March 25, 2020

RE: Temporary Regulatory Guidance regarding Work from Home due to COVID-19 Concerns

In light of the historic and tragic ongoing COVID-19 national emergency, and the clear and present need to do everything reasonable and prudent to prevent the spread of the virus, the Financial Institutions Division (FID) provides the following guidance for all Licensed New Mexico Collection Agencies and Managers in regard to their ability to work temporarily from their home residence, which may not be a licensed New Mexico Branch Location.

This temporary guidance is to assist Collection Agency licensees by giving them the ability to practice social distancing and take precautionary steps that are necessary to avoid the risk of exposure or to comply with voluntary or mandated quarantines. This guidance is effective until May 31, 2020, unless otherwise modified or withdrawn.

The FID will allow licensed New Mexico licensees and their staff to work from their home residence, which may not be licensed as a branch, as long as the following requirements are met:

1. The company has established security protocols in place for employees to securely access systems through a VPN or other secure systems;
2. Security protocols are in place to protect consumer information;
3. Companies and employees do not advertise or hold their residence out as a place of business;
4. Employees shall not meet consumers at, or have consumers come to, an employee's unlicensed residence; and
5. Companies and employees must exercise due diligence in the safeguarding of company and customer data, information, and records, whether in paper or electronic format, and to protect them against unauthorized or accidental access, use, modification, duplication, destruction, or disclosure.

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800

Furthermore, during these times of considerable financial stress, I ask that you consider extending your organization's full support to all those affected. I know each of your organizations take pride in the personal relationships you have established with your customers and the professionalism you demonstrate when dealing with debtors. I am confident that you will work closely with your customers to develop and exercise equitable and prudent collections decisions during this time of need.

On behalf of New Mexicans affected financially by this pandemic, I feel it is important to draw your attention to the financial concerns of so many at this time, and encourage your company and clients to develop plans to assist those in need while maintaining the overall financial safety of your business and your clients. Thank you for your time and consideration.

Any questions or concerns can be directed to: Christopher.moya@state.nm.us.

Sincerely,



Christopher Moya
Director



To: All licensed Collection Agencies and Registered Collectors

From: Commissioner of Commerce Steve Kelley

Re: Enforcement Guidance regarding Minnesota Statutes § 332.33, subd. 3

Effective Date: March 13, 2020

Due to the heightened concern about the coronavirus (COVID-19), we send this temporary regulatory guidance to all collection agencies who are required to license all branches where their collectors work. On January 31, 2020, the United States Health and Human Services Secretary declared the COVID-19 outbreak to be a public health emergency in the United States. On March 11, 2020, the World Health Organization declared COVID-19 to be a pandemic of international concern. The purpose of this communication is to set forth the Department's position regarding the licensure of branch office locations during the pendency or uncertainty of the COVID-19 outbreak.

Licensing Requirements

Under Minn. Stat. § 332.33, "A collection agency who desires to carry on business in more than one place shall procure a license for each place where the business is to be conducted." As such, under Minnesota law, a collector is not allowed to work from home unless their home is a licensed branch location.

Temporary Position of the Department

The Commissioner recognizes that because of the concerns surrounding the COVID-19 outbreak, individual collectors may wish to work from home temporarily to protect themselves even though their home location is not currently licensed by the Department as a branch office. Because of the concerns surrounding the transmission of COVID-19, the Department has decided to not take action against any licensee who allows their individual registered collectors to temporarily work from home as a precautionary measure. This decision is effective immediately through April 30, 2020, so long as the following criteria are met:

- 1) The activity is conducted from the home location of an individual working on behalf of a Minnesota licensee;
- 2) The individual is working from home due to a reason relating to the COVID-19 outbreak and has informed the licensee of such reason;
- 3) None of the activity will be conducted in person with members of the public from the home location; and
- 4) The licensee shall at all times exercise supervision of the activity being performed at the home office and ensure that appropriate safeguards and controls are in place to protect consumer information and data.

Please note that this no action position is only that the Department will temporarily not enforce Minn. Stat. § 332.33, subd. 3. All other legal requirements under Chapter 332, and other applicable law are still in force. A licensee will still be responsible for any other violations of law from the activity performed at the home office, if there are violations.

The Commissioner may amend, revise, or extend this position at any time and at his discretion. This does not constitute a permanent statutory or regulatory exemption from licensure. This is a response to the current COVID-19 outbreak to ensure the safety and wellness of all licensees and their employees.



**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION**

DATE: March 13, 2020

TO: Deferred Deposit Lender, High-Interest Lender, Installment Lender (NRS 675) and Collection Agency Licensees and Registrants

FROM: Sandy O’Laughlin, Commissioner

RE: Temporary Guidance Regarding Working from Home

Purpose:

On March 12, 2020, Governor Steve Sisolak declared a state of emergency for Nevada regarding the coronavirus (COVID-19) outbreak. Accordingly, the Nevada Financial Institutions Division (“NFID”) is issuing this Temporary Guidance (“Guidance”) to address the COVID-19 outbreak.

Due to the COVID-19 outbreak and related concerns pertaining to person-to-person or community spread of the virus, the NFID is offering the following guidance for licensees, registrants, and their employees, and their ability to work temporarily from their residence, even if the residence is not a location licensed with NFID.

This Guidance is issued with the intent to offer licensees and registrants the ability to take precautions deemed necessary to avoid the risk of exposure or to comply with requirements of voluntary or mandated quarantines and is effective through **May 31, 2020**, unless otherwise modified or withdrawn at the discretion of the Commissioner.

This Guidance does not amend current Nevada Revised Statutes (“NRS”) or Nevada Administrative Code (“NAC”) and does not create new statutory framework. All licensees and registrants must comply with the applicable NRS, NAC, and other state and federal laws and regulations, which includes establishing and maintaining proper security protocols to ensure maximum data, records and transaction security.

The Department’s Guidance – Effective through May 31, 2020:

1. Data security requirements include provisions for the employee to access the company’s secured system from any out-of-office device the licensee or registrant uses through the use of a VPN or other system that requires passwords or an identification

- authentication. The company is responsible to maintain any updates or other requirements in order to keep information and devices secure;
2. Neither the employee nor the company is to do any act that would indicate or tend to indicate that the employee is conducting business from an unlicensed location. Such acts include but are not limited to:
 - a. Advertising in any form, including business cards and social media, the unlicensed residence address or landline telephone or facsimile number associated to the unlicensed residence;
 - b. Meeting consumers at, or having consumers come, to an employee's unlicensed residence;
 - c. Holding out in any manner, directly or indirectly, by the employee or company licensee, the residence address that would suggest or convey to a consumer that the residence is a licensed location for conducting licensable activities;
 3. Employees and companies must exercise due diligence in the safeguarding of company and customer data, information and records, whether in paper or electronic format, and to protect them against unauthorized or accidental access, use, modification, duplication, destruction or disclosure.

Questions regarding this Temporary Guidance may be directed to fidmaster@fid.state.nv.us, or to (702) 486-4120.



Illinois Department of Financial and Professional Regulation

Division of Professional Regulation

JB PRITZKER
Governor

DEBORAH HAGAN
Secretary

CECILIA ABUNDIS
Director
Division of Professional Regulation

March 30, 2020

Guidance to Illinois-Licensed Debt Collection Agencies and Debt Buyers Regarding COVID-19

On March 9, 2020, Governor JB Pritzker declared all counties in the State of Illinois as a disaster area in response to the outbreak of COVID-19. On March 20, 2020, the Governor issued Executive Order 2020-10 (“Executive Order”), requiring all non-essential businesses and operations to cease all activities within the State, except for certain identified minimum basic operations.

Although licensed debt collection agencies and debt buyers operating in the State are not listed as essential businesses under the Executive Order, non-essential businesses are allowed to continue operations consisting exclusively of employees or contractors performing activities at their own residences. The Collection Agency Act, 225 ILCS 425 et seq., does not contemplate collectors’ ability to conduct business at any place other than the address of record that is on file with the Illinois Department of Financial and Professional Regulation (“Department”). Thus, debt collection agencies seeking to work at a location other than their address of record, including remotely, are hereby directed to provide the Department notice within 14 days of any address changes pursuant to 225 ILCS 425/2.5(2).

The Department encourages debt collection agencies and debt buyers to work with consumers to modify payment schedules or suspend all collection activity for a period of no less than 60 days.

The Department reminds debt collection agencies and debt buyers of their duties to comply with applicable law, including but not limited to the Fair Debt Collection Practices Act (FDCPA), Fair Credit Reporting Act (FCRA), Servicemembers Civil Relief Act, applicable privacy laws, and all other applicable state and federal statutes.

In particular, the Department reminds licensees to adhere strictly to the requirements of Section 805(a)(1) of the FDCPA and Section 9(a)(19)(A) of the Collection Agency Act, which prohibit communications at times and places that should be known to be inconvenient to the debtor. In light of the economic stress caused by the COVID-19 crisis, the Department will closely monitor adherence to these provisions.

The Department reminds debt collection agencies and debt buyers with respect to their accuracy duties under FCRA and encourages them to use disaster codes along with any other deferment or forbearance codes for any consumer who is unable to repay their debt to mitigate the credit reporting impact of the crisis.



BRAD LITTLE
Governor

PATRICIA PERKINS
Director

DATE: March 12, 2020

TO: Idaho Mortgage Broker/Lender, Mortgage Loan Originators, Regulated Lender, Title Lender, Payday Lender and Collection Agency Licensees and Registrants

FROM: K.C. Schaler, Supervising Examiner

RE: Temporary Regulatory Guidance Regarding Working from Home Due to Coronavirus/COVID-19 Concerns or Quarantines

Due to the Coronavirus/COVID-19 outbreak and related concerns pertaining to person-to-person or community spread of the virus, the Department of Finance is offering the following guidance for licensees, registrants, and their employees and their ability to work temporarily from their residence, even if the residence is not a licensed or registered Idaho branch location.

This Temporary Guidance is issued with the intent to offer licensees the ability to take precautions deemed necessary to avoid the risk of exposure or to comply with requirements of voluntary or mandated quarantines and is effective through June 30, 2020, unless otherwise modified or withdrawn.

The Department will not take an enforcement action against a licensee or registrant for unlicensed activity as long as licensable activities conducted from the employee's residence meet the following requirements:

1. Data security requirements include provisions for the employee to access the company's secure origination system from any out-of-office device the MLO uses through the use of a VPN or other system that requires passwords or an identification authentication. The company is responsible to maintain any updates or other requirements in order to keep information and devices secure;
2. Neither the employee nor the company is to do any act that would indicate or tend to indicate that the employee is conducting business from an unlicensed location. Such acts include but are not limited to:
 - a. Advertising in any form, including business cards and social media, the unlicensed residence address or landline telephone or facsimile number associated to the unlicensed residence;

Temporary Regulatory Guidance Regarding Working from Home Due to Coronavirus/COVID-19 Concerns or Quarantines

- b. Meeting consumers at, or having consumers come, to an employee's unlicensed residence;
 - c. Holding out in any manner, directly or indirectly, by the employee or company licensee, the residence address that would suggest or convey to a consumer that the residence is a licensed location for conducting licensable activities;
3. Employees and companies must exercise due diligence in the safeguarding of company and customer data, information and records, whether in paper or electronic format, and to protect them against unauthorized or accidental access, use, modification, duplication, destruction or disclosure.

Questions regarding this Temporary Guidance may be directed to finance@finance.idaho.gov, or to (208) 332-8000.

FIND COVID-19 INFORMATION AND RESOURCES

TDCI IS FULLY OPERATIONAL. NEED A MEMBER OF OUR STAFF? CONTACT US HERE.

TDCI FREQUENTLY ASKED QUESTIONS ABOUT COVID-19

Collections

COVID 19 and Remote Work

The Statute and Rules have been reviewed and it has been determined there is no prohibition for remote work from home as long as a branch business location is still maintained, and the location is on record on your license file. Of course, it is expected that all collection activities will remain in accordance with applicable State and Federal requirements. Those requirements would include, but not be limited to: 1) a prohibition on the storage of records relating to collection agency activities at the remote work location; 2) a requirement that the records created as part of collecting a claim are being entered remotely into an electronic system housed at a licensed location; and 3) a requirement that no payments on a claim are received at the remote work location.

Mission

It is the purpose of the Collection Service Board to formulate public policy concerning the industry, enact rules and regulations, grant licenses to applicants that meet the requirements, initiate investigations, suspend, revoke or cancel licenses for cause, and ensure compliance with enacted legislation pertaining to the collection industry.

Financial Review

An initial or renewal application must include a current Personal or Corporate Financial Statement prepared by an Active CPA/LPA (a current Independent Auditor Report or Current Year Ending Statement may also suffice).

A Trust Account is required by statute and the Trust Balance on the application is an extension of the referenced financial statements. If not verified by the Financials, Bank statements may be submitted to confirm the balance stated per TCA 62-20-114 and 62-20-102(5).

Solicitor Cards



102. Chapter definitions. (9) "Solicitor" means any individual who is employed by or under a collection service to solicit accounts or sell collection service forms or systems on its behalf.

As such, Solicitor Cards are not required for Collection Agents who only correspond with consumers regarding any alleged debt.

Consumer Alert: Fake Debt Collectors

Please see the article from the FTC at <https://www.consumer.ftc.gov/articles/0258-fake-debt-collectors>

Collection.Service@TN.Gov

§ 58-70-5. Application to Commissioner for permit.

(a) Any person, firm, corporation or association desiring to secure a permit as provided by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at which the person, firm, corporation or association desires to carry on the collection agency business as defined in this Article. An The applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of the following:

- (1) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if different.
- (2) If the applicant is a corporation,
 - a. A certified copy of the board of director's resolution authorizing the submission of the application;
 - b. An authenticated copy of the Articles of Incorporation and all amendments thereto;
 - c. An authenticated copy of the bylaws or other governing instruments;
 - d. If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of State.
- (3) If the applicant is a partnership, an authenticated copy of the then current partnership agreement.
- (4) If an assumed business name is used, certificates showing that the assumed business name has been filed as required by Article 14A of Chapter 66 of the General Statutes.
- (5) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20.
- (6) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings.
- (7) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in this State.
- (8) A statement certifying that there are no unsatisfied judgments against the applicant.
- (9) A list of all telephone numbers assigned to or to be used by the applicant in the operation of the collection agency.
- (10) The appropriate permit fee as required by G.S. 58-70-35.
- (11) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities, and positive net worth of the applicant.
- (12) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.

- (13) A statement certifying that no officer, individual proprietor, or partner of the applicant has been convicted of a felony involving moral turpitude or any violation of any State or federal debt collection law.
- (14) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his or her inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation.
- (15) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.

(b) Repealed by Session Laws 2016-100, s. 6, effective July 1, 2017 – see note for contingency.

(b1) In addition to the information required by subdivision (a)(2) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien corporation be sold to an entity unrelated to the parent entity, notice shall be provided to the Department of the pending sale 30 days in advance of the sale. Provision of Form 8-K, properly filed with the Securities and Exchange Commission, shall be deemed compliance with the notice requirement of this subsection. In the event of a sale, the new parent entity shall provide evidence to the Department within 30 days of the sale of its and the alien corporation's compliance with the requirements of this section. In the event that the new parent entity does not provide the evidence within 30 days after the sale, the alien corporation's permit shall be automatically suspended until the Department is provided the evidence of compliance which is satisfactory to the Commissioner.

(c) through (o) Repealed by Session Laws 2016-100, s. 6, effective July 1, 2017 – see note for contingency.

(p) In the case of an alien corporation, when the corporation is in violation of this Article, the parent entity must agree to cure the violation by the alien corporation.

(q) For purposes of this Article, the following definitions apply:

- (1) "Alien corporation" means a company incorporated or organized under the laws of any jurisdiction outside of the United States.
- (2) "Foreign corporation" means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with subdivision (a)(11) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the

applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in subdivision (a)(11) of this section.

(t) Nothing in this section shall be construed to require that a person, firm, corporation, or association secure a permit for a remote location from which a single employee works under the control and monitoring of a collection agency through telecommunications and computer links, so long as all of the following conditions are met:

- (1) Records required to be kept under G.S. 58-70-25 are not maintained at the remote location.
- (2) The remote location is not held open to the public as a place of business.
- (3) The person, firm, corporation, or association has a valid permit issued pursuant to this Article for at least one physical location in this State. (1931, c. 217, s. 2; 1943, c. 170; 1959, c. 1194, s. 2; 1969, c. 906, s. 2; 1979, c. 835; 1989, c. 441, ss. 2, 3; 2001-269, s. 1.1; 2006-134, s. 1; 2009-566, s. 21; 2016-107, s. 5; 2016-100, s. 6.)

**CHAPTER 13-05
COLLECTION AGENCIES**

North Dakota

13-05-01. Administration.

The department of financial institutions shall use its facilities to administer and enforce this chapter. Any person or persons delegated to administer this chapter may not have financial interests directly or indirectly in any business which is subject to this chapter.

13-05-01.1. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Collection agency" means a person that, in the ordinary course of business, engages in debt collection.
2. "Commissioner" means the commissioner of financial institutions.
3. "Communication" means the conveyance or receipt of information regarding or facilitating the collection of a debt, directly or indirectly, to or from any person through any medium.
4. "Credit card payment" means a payment made by a payment card which incurs a credit card interchange fee to the collection agency, regardless of the type of payment card used.
5. "Creditor" means a person that offers or extends credit creating a debt or to which a debt is owed. The term does not include a person to the extent that person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt.
6. "Debt" means an obligation or alleged obligation to pay money arising out of a transaction, regardless of whether the obligation has been reduced to a judgment.
7. "Debt collection" means the act of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term also includes solicitation of debts for the purpose of collection and accepting assignment of debts for the purpose of collection.
8. "Insolvent" means the point at which a licensed entity's liabilities exceed the entity's tangible assets, which only include assets that have a physical existence and are capable of being assigned a value.
9. "Mortgage servicing company" means a company performing the required duties of a mortgage seller, such as collecting payments, releasing the lien on full payment, and confirming taxes are paid and insurance is in force.

13-05-02. Collection agency license required.

Except as otherwise provided in this chapter, no person, other than a collection agency licensed and authorized under this chapter, may engage in debt collection in the state of North Dakota without a collection agency license issued by the commissioner. A person engages in debt collection in North Dakota if the debtor resides in North Dakota.

13-05-02.1. Branch offices.

The commissioner may grant approval for each branch office which must be submitted by an application. When used in this chapter, "branch office" means a physical location where collection activity is carried out, other than the location where the collection agency license was granted, but does not include a virtual office. As used in this chapter, "virtual office" means a remote location from which employees can work under the full control and monitoring of the collection agency through telecommunications and computer links. Records may not be maintained at a virtual office and a virtual office may not be held open to the public as a place of business.

13-05-02.2. Child support collection agencies.

1. Notwithstanding sections 13-05-02 and 13-05-02.3, a collection agency attempting in any manner to collect child support as defined in section 14-09-09.10 must be licensed

under this chapter if either the child support debtor or creditor reside within this state, if the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1.

2. A collection agency licensed under this section may not:
 - a. Impose a fee or charge for any child support collected primarily through the efforts of a governmental agency;
 - b. Impose a fee or charge for collection of a current child support payment; or
 - c. Designate a current child support payment as past-due support or other amount owed.
3. If the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1, all child support payments collected by a collection agency must be paid to the department of human services within five business days for disbursement under section 14-09-25. Child support payments disbursed under section 14-09-25 may not be redirected to a collection agency unless specifically permitted by rules adopted by the department of human services.
4. A collection agency failing to pay child support payments to the department of human services as required in this section is liable to the obligor for three times the amount improperly withheld by the collection agency or five hundred dollars, whichever is greater, in addition to any other remedy or damages permitted by law. The department of human services is not required to give credit for payments withheld by a collection agency in violation of this section.
5. Any person contracting for services with a collection agency for the collection of child support may cancel the contract without a fee or charge upon thirty days' written notice.

13-05-02.3. Entities exempt from licensing requirements.

This chapter does not apply to:

1. Attorneys at law who are licensed to practice in the state of North Dakota. This exemption is limited to the actions of the licensed attorney and does not extend to persons either employed by the attorney or acting on behalf of the attorney;
2. Licensed real estate brokers;
3. Banks;
4. Trust companies;
5. Building and loan associations;
6. Credit unions;
7. Agencies of a state or of the federal government;
8. Abstract companies doing an escrow business;
9. Creditors collecting their own debts;
10. Mortgage servicing company;
11. Individuals or firms who purchase or take accounts receivable for collateral purposes;
12. Individuals employed in the capacity of creditmen upon the staff of an employer not engaged in the business of a collection agency; or
13. A public officer, receiver, or trustee acting under the order of a court.

13-05-03. Application for a collection agency license.

1. Each application for a collection agency license, or for a renewal thereof, must be in the form prescribed by the commissioner and must contain the following information:
 - a. The full name and proposed business name of the applicant.
 - b. The address where the business is to be conducted.
 - c. The names and addresses of the applicant and those associated with the applicant. If the applicant is a corporation, the application must contain the names of the officers of the corporation. If the applicant is a limited liability company, the application must contain the names of the managers of the limited liability

- company. The applicant must register with the North Dakota secretary of state if so required.
- d. Such additional information which the department of financial institutions shall require.
2. To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with a nationwide multistate licensing system and registry or other entities designated by a nationwide multistate licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the chapter. The applicant shall pay directly to such nationwide multistate licensing system any additional fee relating to participation in such nationwide multistate licensing system.
 3. In connection with an application for licensing as a collection agency, or any license renewals, the applicant shall furnish to the nationwide multistate licensing system information concerning the applicant's identity, which may include:
 - a. Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check;
 - b. Personal history and experience in a form prescribed by the nationwide multistate licensing system, including the submission of authorization for the nationwide multistate licensing system and the commissioner to obtain:
 - (1) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
 - (2) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; and
 - c. Any other documents, information, or evidence the commissioner deems relevant to the application regardless of the location, possession, control, or custody of such documents, information, or evidence.
 4. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of subsection 3, the commissioner may use the nationwide multistate licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.
 5. For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection 3, the commissioner may use the nationwide multistate licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

13-05-04. Application requirements - Fee to accompany application for collection agency license.

The application for a collection agency license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members as will provide the basis for the investigation and findings contemplated by section 13-05-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of four hundred dollars for the annual license. In addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be deposited in the financial institutions regulatory fund.

13-05-04.1. Surety bond required.

1. Each licensee shall maintain a surety bond in the amount of fifty thousand dollars.
2. The surety bond must be in a form as prescribed by the commissioner.
3. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.

4. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

13-05-04.2. Minimum net worth required.

A minimum net worth must be continuously maintained by every licensee in accordance with this section.

1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.
2. If the net worth of a licensee falls below the minimum net worth as set forth in subsection 1, the licensee shall provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner that the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license.

13-05-05. Expiration and renewal of license.

All licenses required herein expire on December thirty-first of each year and may be renewed. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of the license. A collection agency license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a collection agency license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The collection agency license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

13-05-05.1. Change of name or address.

A licensee is required to submit within twenty business days of the date of change, notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner.

13-05-05.2. Automatic six-month extension of license during 2014 calendar year.

Repealed by S.L. 2019, ch. 123, § 10.

13-05-06. Powers of the department of financial institutions.

Insofar as consistent with other provisions of law, the department of financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.
2. Conduct investigations and make an examination of any licensee or licensee's place of business, including all records of such business, and to subpoena witnesses anytime it

has reason to believe such is necessary to ensure and enforce compliance with state and federal rules and regulations. The licensee shall pay an examination or visitation fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination or visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

3. Establish codes of ethical conduct for licensees.
4. Adopt any and all rules and regulations necessary to carry out the purpose of this chapter.
5. Issue and serve upon any person or licensed collection agency an order to cease and desist to take corrective action when the department has reason to believe the person or agency is violating, has violated, or is about to violate the provisions of this chapter. An interested party may appeal issuance of a cease and desist order under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the order.
6. If the commissioner determines a licensee is insolvent, or the license has expired or terminated for any reason, the commissioner, on determining such action necessary to protect the public interest, may apply to the district court for the county in which the main office of such licensee is located for appointment of a receiver to receive the assets of the licensee for the purpose of liquidating its business or for such other relief as the nature of the case and the interest of the claimants may require. The reasonable and necessary expenses of the receivership shall constitute the first claim on the bond.

13-05-06.1. Suspension and removal of collection agency officers or employees.

1. The commissioner of financial institutions may issue and serve upon any current or former collection agency officer or employee and upon the collection agency involved an order stating:
 - a. That the current or former officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
 - (1) Violating any law, rule, order, or written agreement with the commissioner.
 - (2) Engaging in any harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving collection activity.
 - (3) Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
 - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a collection agency.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If no hearing is requested within twenty business days of the date the order is served, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or removing the current or former officer or employee. The current or former officer or employee shall have the opportunity to request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon service of the final order on the current or former officer or employee and upon the collection agency. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a collection agency pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
5. When any current or former officer or employee, or other person participating in the conduct of the affairs of a collection agency is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately

suspend the person from office or prohibit the person from any further participation in the collection agency's affairs, or both. The order is effective immediately upon service of the order on the collection agency and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.

6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

13-05-06.2. Investigations and subpoenas.

1. The department of financial institutions may:
 - a. Make such public or private investigation within or outside this state as it deems necessary to determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter, or to aid in the enforcement of this chapter or in the adopting of rules and forms under this chapter.
 - b. Require or permit a person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.
 - c. Publish information concerning a violation of this chapter or a rule or order under this chapter.
2. For the purpose of an investigation or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
3. In case of contumacy by, or refusal to obey a subpoena issued to, a person, the district court, upon application by the department of financial institutions, may issue to the person an order requiring the person to appear before the department, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
4. A person is not excused from attending and testifying or from producing a document or record before the department of financial institutions, or in obedience of the subpoena of the department or in a proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but an individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
5. In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe any of the documents and records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents and records as necessary

- to conduct its ordinary business affairs. All records controlled by the commissioner under the authority of this subsection shall be exempt under the open records law.
6. In order to carry out the purposes of this section, the commissioner may:
 - a. Retain accountants or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations; and
 - b. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter.
 7. The authority of this section remains in effect, whether such a licensee, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

13-05-06.3. Prohibited acts and practices.

It is a violation of this chapter for a person or individual subject to this chapter to:

1. Negligently make any false statement or knowingly make any omission of material fact in connection with any information, reports, or applications filed with the department or another governmental agency.
2. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
3. Fail to truthfully account for moneys belonging to or collected from another.

13-05-06.4. Confidentiality.

To promote more effective regulation and reduce regulatory burden through supervisory information sharing, the commissioner or commissioner's designee may furnish information to or receive information from a nationwide multistate licensing system for the purpose of regulation of the financial services industry. Information furnished by the commissioner to any third party which is confidential or privileged in the commissioner's possession remains confidential or privileged in the possession of the third party. Information received by the commissioner from any third party which is confidential or privileged in the third-party's possession remains confidential or privileged in the commissioner's possession.

13-05-06.5. Credit card payment.

A collection agency may collect or attempt to collect, in addition to the principal amount of a claim, a transaction fee for processing a credit card payment in an amount that does not exceed two and one-half percent of the payment amount if:

1. The transaction fee is not prohibited under section 13-05-02.2;
2. A no-cost payment option is available to the debtor; and
3. The collection agency discloses the no-cost option to the debtor at the same time and in the same manner as the debtor's credit card information is taken.

13-05-07. Manner in which records and funds to be kept by collection agency.

1. Every collection agency licensed under this chapter shall keep a record of all sums collected by it and of all disbursements made by it for a period of six years from the date of last entry thereon. The records of a licensee may be maintained electronically provided they can be reproduced upon request of the department of financial institutions and within the required statutory time period provided in this section.
2. When a licensee ceases operations for any reason, the licensee shall be required to inform the department of the location of the records required to be maintained in accordance with section 13-05-07. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.
3. No licensee, individual, or person subject to investigation or examination under this section may intentionally make any false entry in any such collection agency record or

knowingly withhold, abstract, secrete, remove, mutilate, destroy, or otherwise dispose of any books, records, computer records, or other information within the time limit provided in this section.

4. No licensee under this chapter may commingle the money of collection agency customers with other than collection funds and shall maintain a separate bank account for such customer's funds and shall keep such funds in the bank account until disbursed to the customer.

13-05-07.1. Response to department requests.

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

13-05-08. Revocation of license - Suspension of license - Surrender of license - Pre-existing contracts.

1. The commissioner may issue and serve upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:
 - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
 - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
 - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue such license.
 - d. The licensee has failed to maintain the required bond.
 - e. The licensee has failed to maintain registration with the North Dakota secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If no hearing is requested within twenty business days of the date the order is served upon the licensee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, upon written notice, enter an order suspending such license for a period not exceeding sixty days, pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender the licensee's license by delivering it to the department of financial institutions with written notice of its surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

13-05-08.1. Biennial report.

The commissioner of financial institutions shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

13-05-09. Remedies not exclusive.

The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

13-05-10. Penalty.

Any person violating any of the provisions of this chapter is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.